He says this must be so since, in considering whether a company should be wound up under s 218(a), (b) or (c) of the Companies Act 1965, the court may take into account not only present but contingent debts in coming to a finding that the company is unable to pay its debts.

Alternatively, if the court so finds that the present petitioner has no locus standi, then since he is also representing the supporting creditors, counsel applied, on behalf of the supporting creditors, that under r 33 of the Companies (Winding-Up) Rules 1972, the court substitutes the first judgment creditor, the Anglo American Corp Sdn Bhd, as petitioner. He therefore applied for such substitution.

As was submitted by counsel for the respondent, he was taken by surprise in the matter of the last submission. The court agreed the point was an afterthought by counsel for the petitioner. Be that as it may, I think the point deserves consideration. I therefore allowed the petitioner's counsel to expand on it. As he said, in the authorites cited by counsel for the respondent, there were no supporting creditors and therefore no question of r 33 applying. He cited *Re Welsh Brick Industries Ltd*[5] where it was held that in spite of the fact that unconditional leave to defend had been granted in the King's Bench action, it was competent for the judge in the winding-up court to go into the evidence which was before him to consider whether or not there was a bona fide dispute. The registrar's order was a matter which the winding-up court would take into consideration, but it did not preclude the judge from finding, as a fact, that there was no bona fide dispute as to the debt. In further support of his application that the first judgment debtor be substituted, the petitioner's counsel urged the court to peruse s 221 of the Companies Act 1965 and applied that the court may make an order which is just.

I find the petitioner's application to substitute the first judgment creditor in place of the petitioner caused me some difficulty. The difficulty arises because *Re Welsh Brick Industries Ltd*[5] is far from the authority to have the petitioner substituted. What that authority says is that in spite of the dispute, it did not preclude the judge from finding that there was no bona fide dispute. It means if a winding up is to be made, it is still incumbent on the court to consider the Kuala Lumpur dispute to see whether it is bona fide. In this case, it had to be taken that there was substantial dispute else the Kuala Lumpur court would not, by order, have allowed the respondent's application to have the default judgment set aside. But there are other judgment creditors not satisfied, indicating to a certain degree that the respondent may be unable to pay its debts and is therefore insolvent. I lean in favour of *Re Lympne Investments Ltd*[6] at p 389 which decided that when a debt was disputed on substantial ground, the petitioner was not a 'creditor' clothed with locus standi to present a petition *even if the company was insolvent* (emphasis is mine). Consistent with the principle in that case, *Jurupakat Sdn Bhd* v *Kumpulan Good Earth (1973) Sdn Bhd*[4] was also decided echoing that decision.

I also refuse the petitioner's counsel's application to substitute the first judgment creditor because considered on any angle one arrives at the answer it is unjust to do so. 'Just' should not only be for the petitioner and the supporting creditors but there is a higher consideration that by granting that application, the first judgment creditor would be able thereby to short circuit the whole of the procedures incumbent on a petitioner to adhere to and comply with before a winding-up order could be made and had. The procedure culminating in the ending of that corporate person must have been designed to achieve an orderly mode of winding up with sufficient checks and balances. I rule any short cuts would only work in injustice. For the reasons stated above, I therefore allow the objection of the respondent and dismiss the petition for winding up with costs to the respondent to be taxed.

Application allowed.

Solicitors: *Yeo & Yeo; Ong Ban Chai & Co.*

Reported by *Kevin Mathews*

Ming Yueh Holdings Sdn Bhd v Kong Ming Bank Bhd & Anor

HIGH COURT (SIBU) — SUIT NO KG 17 OF 1989
HAIDAR J
2 SEPTEMBER 1989

Civil Procedure — Injunction — Setting aside — Application for — Legal status of applicant to obtain injunction — Whether member of company

Companies and Corporations — Registered member — Member and shareholder distinguished — Companies Act 1965, ss 16(6), 143, 148(1), 158(1) & Fourth Schedule Table A art 111

The plaintiff was a registered shareholder of the first defendant company. Its shares were allegedly sold to two parties who commenced legal proceedings for a declaration that they were the registered and beneficial owners of the shares and obtained injunction orders restraining the plaintiff from dealing with or transferring the same. For the purpose of making a rights issue, the parties mutually agreed to transfer the shares to the second defendant as stakeholder and to allow the first defendant to register the second defendant as the shareholder of the shares and rights issue. In view of this, the injunction orders were discharged and pursuant to negotiations between the parties for a settlement, the second defendant was appointed stakeholder. Upon the failure of the negotiations, the plaintiff obtained an ex parte injunction restraining the first defendant from proceeding with its annual general meeting ('AGM') on 10 May 1989 or any other date or holding any other general meeting unless the plaintiff had been given notice of the same and were permitted to attend and vote. The plaintiff contended, inter alia, that if the AGM was to proceed, the plaintiff would be wrongfully de-

prived of the right to vote for the directors of the board which would constitute a fraud on the plaintiff as a shareholder. At the time of the application for injunction, it was not disputed that the plaintiff was neither a shareholder nor a member of the first defendant company. The first defendant applied for the injunction to be set aside.

Held, setting aside the injunction:

(1) The issue relating to the plaintiff's right to obtain the injunction is whether the plaintiff was a registered member of the first defendant company at the time of the application. As the plaintiff was not a member at the time, it was not entitled to be issued with a notice of the AGM, in accordance with s 148(1) of the Companies Act 1965. Neither was it entitled to be given notice under art 111 of Table A of the Fourth Schedule to the said Act.

(2) The plaintiff therefore had no legal status to injunct the first defendant company from attempting to convene the AGM when it was merely complying with the statutory duties imposed on it and the plaintiff's action smacked of mala fide.

(3) Although the plaintiff may have a claim over those shares which were originally in its name, this claim is still under litigation and it is not for the court at this juncture of the proceedings to speculate on the outcome.

Legislation referred to

Banking Act 1973 ss 19(4)(a), 20(1)(c)
Companies Act 1965 ss 16(6), 143, 148(1), 158(1), Fourth Schedule Table A art 111
Rules of the High Court 1980 O 18 r 19, O 56 r 2(2)

Richard Wong for the plaintiff.
Robin Hii for the first defendant.
Paul Tang for the second defendant.
JC Fong for the interveners.

Cur Adv Vult

Haidar J: The plaintiff, Ming Yueh Holdings Sdn Bhd ('Ming Yueh'), filed an ex parte summons-in-chambers on 10 May 1989 (encl 5) for:

(1) An injunction restraining the first defendant, Kong Ming Bank Bhd, by its servants or agents from proceeding with the adjourned annual general meeting on 10 May 1989 or any other date or dates or holding any other general meeting of the first defendant company unless the plaintiff had been given notice of the meeting and were permitted to attend and vote thereat relating to its 663,921 shares in the Kong Ming Bank Bhd with the rights issue share thereto or until the final disposal of this action or until further order.

(2) An injunction restraining the first defendant by its servants, or agents or otherwise howsoever from registering any person or any corporate body other than the plaintiff, as registered owner of the said shares 785,699 in Kong Ming Bank Bhd and its rights issue shares.

(3) An injunction restraining the second defendant, Mayban (Nominees) Sdn Bhd, whether by its servants, agents or otherwise howsoever from disposing of or purporting to dispose of any of the 785,699 shares and its rights issue shares in the first defendant company until the determination of this action.

The costs of and incidental to this application shall be paid by the defendants to the plaintiff.

Ming Yueh put forth four grounds in support thereof. A lengthy affidavit was filed by the chairman of Ming Yueh, Datuk Ling Beng Sung, on 10 May 1989 in support of the ex parte application for injunction.

When the ex parte application was heard, counsel for Ming Yueh, Mr Wong, abandoned prayers (2) and (3) with liberty to apply, if necessary (see notes of evidence to encl 44). As to prayer (1), he asked to add the following words to the end of it: 'or until further order'. The amendment to prayer (1) was granted by the court. The application of Ming Yueh in terms of prayer (1) of the summons as amended was granted by the court after hearing counsel with the usual terms as to the undertaking by Ming Yueh to abide by any order which the court may make as to damages. No order as to costs was made in respect of this application.

It may perhaps be pertinent to reproduce the order (encl 7) obtained by Ming Yueh. The order reads:

> The first defendant, Kong Ming Bank Bhd, by its servants or agents be restrained from proceeding with the adjourned annual general meeting on 10 May 1989 or any other date or dates or holding any other general meeting of the first defendant unless the plaintiff had been given notice of meeting and were permitted to attend and vote thereat relating to its 663,921 shares in the first defendant and the rights issue shares thereto or until the final disposal of this action or until further order.

There are three summons-in-chambers filed subsequently:

(a) An application dated 16 May 1989 (encl 24) for leave to intervene in this action by Ling Beng Hui, Dato' Ling Beng King, Jayaku Sdn Bhd and Ting Lieng Poh.

(b) An application dated 17 June 1989 (encl 66) by the second defendant under O 18 r 19 of the Rules of the High Court 1980.

(c) An application dated 2 August 1989 (encl 91) by the first defendant for an order, inter alia, that the order for an injunction made on 10 May 1989 be set aside or discharged.

When the three applications came before me on 2 September 1989, Mr Wong, counsel for the plaintiff, submitted that the application to intervene should be heard first by the court. Mr JC Fong, counsel for the interveners, submitted that the three applications should be determined on the basis of urgency and importance, that is, the important application is the application to set aside the injunction. Further, Mr JC Fong submitted that according to his research there is no need for him to seek leave to intervene in this case and he could therefore proceed with

prayer (2) of his application. Alternatively, he was prepared to have his application stood down for the application of the first defendant to be heard first and that he be allowed to be present as watching brief for his client.

Mr Robin Hii, counsel for the first defendant, left the matter entirely to the court's discretion to determine. Mr Paul Tang, counsel for the second defendant, agreed with what Mr JC Fong submitted and either way was fine with him.

I ruled that I will hear the first defendant's application first as it is more urgent and important. In any event, one of the main prayers of the application to intervene is also to set aside the injunction granted to Ming Yueh on 10 May 1989. As for the application of the second defendant, it was fixed for hearing before the senior assistant registrar on the same date and Mr Paul Tang wrote in (encl 98) for the application to be heard by the judge purely on the ground of convenience as counsel for the plaintiff cannot be before the judge and the senior assistant registrar at the same time. The first defendant's application was more pressing and important and as the ground put forth by Mr Paul Tang for his application to be heard by the judge was on the sole ground of convenience, in the circumstances, I ordered that his application be adjourned for hearing before the senior assistant registrar as originally fixed. The new date is for the senior assistant registrar to determine.

Before proceeding to hear the first defendant's application, its counsel, Mr Robin Hii, objected to the presence of Mr JC Fong on ground of procedure. Mr Wong, counsel for Ming Yueh, objected to the presence of both Mr JC Fong and Mr Paul Tang on the ground that the hearing on that day was only confined to the first defendant's application as ordered by me. I overruled the objections on the following grounds:

(a) Since Mr JC Fong has filed an application to intervene in these proceedings on behalf of his clients, he can be present as watching brief in the interests of his clients.

(b) According to Mr Paul Tang, the second defendant was served with a copy of the application of the first defendant to set aside the injunction and his client therefore has interests in these proceedings. Hence Mr Paul Tang can be present as watching brief for his client.

After hearing the submissions of Mr Robin Hii and Mr Wong and considering the relevant laws, the authorities and the affidavits, I ordered that the injunction granted to Ming Yueh on 10 May 1989 be set aside with damages to be assessed by the senior assistant registrar. I awarded costs to the first defendant. Ming Yueh's counsel orally asked for further argument in open court and I ruled that I do not need to hear further argument and a certificate to that effect under O 56 r 2(2) of the Rules of the High Court 1980 was issued subsequently. Ming Yueh appealed against my decision setting aside the injunction.

Before proceeding to give the grounds of my decision, it is perhaps appropriate for me to set out the facts as can be ascertained from the statement of claim as the ex parte summons-in-chambers of Ming Yueh hinges on its statement of claim filed therein (encl 3). It was not disputed that at the material time of the application for the injunction, Ming Yueh was not the registered shareholder of the first defendant company. It was not disputed also that as at July 1988, Ming Yueh was the registered shareholder of 785,699 shares in the first defendant company. Out of the 785,699 shares originally registered in Ming Yueh, 121,788 shares were allegedly sold to one Abang Mohamed bin Abang Sarkawi ('Abang Mohamed') and 663,921 shares were allegedly sold to Fusing Construction Sdn Bhd ('Fusing').

By Sibu High Court Civil Suit No 23 of 1984 ('Suit No 23 of 1984'), Abang Mohamed claimed against Datuk Ling Beng Sung, Chahaya Construction and Ming Yueh, inter alia, for a declaration that he is and was at the material times the beneficial owner of 121,778 ordinary shares in the first defendant company and is entitled to be registered in the register of members of the first defendant company as the holder thereof. By Sibu High Court Civil Suit No 34 of 1984 ('Suit No 34 of 1984'), Fusing claimed against Chahaya Construction, Datuk Ling Beng Sung and Ming Yueh, inter alia, for a declaration that it is and was at the material times the registered and beneficial owner of 663,921 ordinary shares in the first defendant company.

Injunction orders were obtained by Abang Mohammed and Fusing in Suit Nos 23 of 1984 and 34 of 1984 respectively restraining Ming Yueh and any of its servants or agents or otherwise howsoever to deal with or transfer the said 121,778 and 663,921 shares respectively until the trial of the actions or until further order. In view of the injunction orders obtained in respect of the 121,788 and 663,921 shares, totalling 785,699 shares, Ming Yueh and the first defendant were unable to deal with the 785,699 shares for the purpose of issuing rights issue shares in compliance with the directive of Bank Negara Malaysia and in compliance with the capital adequacy ratio under the Banking Act 1973.

In order to satisfy the above requirements, all the parties in Suit No 23 of 1984 and Suit No 34 of 1984 mutually agreed that the said 785,699 shares be transferred from Ming Yueh to the second defendant company as stakeholder for the purpose, inter alia, to allow the second defendant company as the stakeholder to receive notice of an extraordinary general meeting from the first defendant company and to vote thereat in support of a motion to make a rights issue of 6,000,000 ordinary shares, and to allow the first defendant company to register the

second defendant company as a shareholder of the said 785,699 shares together with the rights issue shares thereto.

In view of the mutual agreement reached as above stated, the injunction orders and the undertakings pertaining to Suit No 23 of 1984 and Suit No 34 of 1984 were discharged. It was further agreed to explore the possibility of a global settlement of Suit No 23 of 1984 and other suits pending in the court, viz Suit No 32 of 1984, Suit No 33 of 1984, Suit No 29 of 1984, Suit No 124 of 1984, Suit No 125 of 1984, Suit No 126 of 1984, Suit No 127 of 1984 and Originating Summons No 2 of 1984, all parties in these suits entered into what is called 'a gentlemen's agreement' whereby Abang Mohamed and Fusing would buy all the said 785,699 shares from Ming Yueh at a price to be agreed by the parties. In the event no settlement could be reached, the parties were to proceed with their respective claims in the said suits already in court. In consequence of the gentlemen's agreement, the letter of appointment of the second defendant company as a stakeholder of 785,699 shares and the letter of undertaking dated 27 June 1988 were executed by the relevant parties.

Negotiations between the relevant parties failed. Bank Negara, by letter dated 5 April 1989, suggested the basis of settlement of the dispute between the parties after having two meetings with the relevant parties. In the meantime Bank Negara by another letter dated 28 March 1989 addressed to the chairman of the first defendant company, expressed the view that existing members of the Board of the first defendant company be re-elected pending the resolution of the various disputes amongst the shareholder. As there was an urgent need to hold the annual general meeting of the first defendant company to pass its 1987 annual accounts and have the said accounts published accordingly, Bank Negara expressed the views vide the said letter that the annual general meeting should be held as soon as possible 'to allay any misapprehension amongst the depositors and bankers having relationship with your bank and that the non-re-election of the existing board would re-establish the image of the bank'. Subsequently, by a letter dated 5 May 1989 by Bank Negara addressed to the chairman of the first defendant company, the conditions stipulated in the said letter of 28 March 1989 from Bank Negara were withdrawn.

In view of the failure to reach settlement of the gentlemen's agreement, Ming Yueh, by letter dated 6 May 1989 addressed to the first defendant company, instructed it not to register the said 785,699 shares and the rights issue of 942,839 shares in the first defendant company in the name of any person other than Ming Yueh. Likewise, by letter dated 6 May 1989, Ming Yueh wrote to the second defendant company to return and re-transfer the said 785,699 shares together with the rights issue of 942,839 shares in the first defendant company to Ming Yueh.

The twenty-second annual general meeting of the first defendant company was convened for 17 April 1989 but by consent it was adjourned to 10 May 1989 at 5.15pm. One of the items on the agenda of the annual general meeting would be to elect its directors to the board.

In the premises, Ming Yueh contended that the said 663,921 shares together with the rights issue shares of 796,705 shares which together constituted 13.28% of the total shares in the first defendant company ought to have been returned to Ming Yueh for the purpose of exercising the right to vote in the annual general meeting of the first defendant company. According to Ming Yueh, if the annual general meeting is to proceed on the date as scheduled, Ming Yueh would be deprived of the right to vote for the directors to the board of the first defendant company. The wrongful deprivation of Ming Yueh's such right in the circumstances would constitute a fraud on Ming Yueh, being a shareholder in the first defendant company resulting in the change over of the management of the first defendant company. As a result, Ming Yueh alleged that the second defendant was holding the said 663,921 shares and 796,705 rights issue shares wrongfully.

Ming Yueh therefore asserted that unless restrained, the first defendant company will proceed with the annual general meeting on 10 May 1989, thus depriving Ming Yueh of the right to vote in relation to its alleged 663,921 ordinary shares and the rights issue of 796,705 shares. Hence the application of Ming Yueh on 10 May 1989 itself to the court for an order to injunct the first defendant company by its servants or agents from proceeding with the adjourned annual general meeting on 10 May 1989 or any other date or dates or holding any other general meeting of the first defendant company *unless* Ming Yueh has been given notice of the meeting and is permitted to attend and vote thereat relating to its alleged 663,921 shares in the first defendant company with the rights issue shares thereto or until the final disposal of this action or until further order and the injunction order to that effect was given on the same day itself by the court. The adjourned annual general meeting of the first defendant company on 10 May 1989 was therefore aborted.

Now, the first defendant company in its application (encl 91) through the affidavit of one of its secretaries, Kam Kah Weng, submitted the following grounds:

(a) Ming Yueh is not and was not at the material time the injunction was applied for, the registered shareholder of the first defendant company. In support thereof, he produced a copy of its list of shareholders as at 26 July 1989, exhibited as 'KKW-1'. This fact was not disputed.

(b) Since Ming Yueh is not and was not at the material time the registered shareholder of the first defendant company, Ming Yueh has no right and is not entitled

to vote at the adjourned annual general meeting or any other general meeting of the first defendant.

(c) The first defendant was simply carrying out its statutory obligation under s 143 of the Companies Act 1965 in attempting to convene the adjourned annual general meeting.

(d) The first defendant company is required by law to have the 1986 accounts and the 1987 accounts received and adopted by its shareholders at a general meeting before the first defendant company is in a position to comply with certain other statutory requirements including s 19(4)(a) of the Banking Act 1973. In fact Bank Negara by letter, exhibited as 'KKW2', indicated that it will no longer grant any extension beyond 31 July 1989 for the first defendant company's 1986 and 1987 accounts to be received and adopted by its shareholders. Otherwise, Bank Negara will take appropriate action should the first defendant company fail to comply with s 20(1)(c) of the Banking Act 1973.

(e) The first defendant company is obliged under the law and under its articles of association to recognize persons whose names appear on the first defendant's register of members at the material time as alone having the rights of membership including the right to receive notice of, attend and vote at the annual general meetings and other general meetings of the first defendant company and that the first defendant company is therefore not obliged under the law to take notice of any disputes which Ming Yueh, who was and is not the registered member of the first defendant company at the material time, may have with other parties concerning any past or present shareholdings in the first defendant company.

(f) The existence of any disputes between Ming Yueh and past or present shareholder of the first defendant company should not hinder the normal business of the first defendant company or the legitimate and routine general meetings of its shareholders.

It appeared to me that the central issue relating to the injunction obtained by Ming Yueh was whether it was and is the registered shareholder of the first defendant company at the material time the injunction was obtained. As I said earlier, it was not disputed that Ming Yueh was not a registered shareholder as exh 'KKW1' clearly showed. If that be the case, has Ming Yueh the legal rights it claimed to have, that is, notice of the annual general meeting or any general meeting of the first defendant company must be given to Ming Yueh and that Ming Yueh be permitted to attend and vote thereat relating to its purported 663,921 ordinary shares in the first defendant company and the rights issues thereto or until the disposal of this action seeking, inter alia, declaration that it is the registered or beneficial owner of 785,699 fully paid ordinary shares of $1 each and the rights issue of 942,839 shares in the first defendant company.

The term 'shareholder' is often loosely used as a synonym for 'member'. The correct term to use in reference to any person having any share in a company would appear to be member. Even the fact that a person owns shares does not make him a member of the company. There are two ways to become a member of a company.

First, the subscribers to the memorandum are automatically members of the company; they become members ipso facto on the incorporation of the company. Secondly, any person who agrees to become a member and whose name is on the register of members is a member of the company (see s 16(6) of the Companies Act 1965). However, a member need not be a shareholder, the obvious case being where the company does not have a share capital. Nor is a person who owns shares in a company necessarily a member, for instance, it is possible to purchase shares on the Stock Exchange without being registered as the holder of those shares in the company's register of members. Thus a person may be a shareholder (in the sense of owning shares in the company) without being a member. In either case it was not applicable to Ming Yueh in this case (see *Company Law* by Walter Woon).

A holder of shares who is not a member is not entitled to exercise any of the rights of membership. This is necessarily so as, according to s 16(6) of the Companies Act 1965, those persons whose names are in the company's register of members shall be members of the company. In this case, as admitted and shown by exh 'KKW1', Ming Yueh was not a member of the first defendant company at the material time (this was not disputed) and it follows therefore that it is not entitled to exercise any of the rights of a member that it claimed it has as in its statement of claim. It may be true that Ming Yueh may have a claim over those shares which were originally admittedly registered in its names and subsequently transferred under some form of agreement between certain parties and because the agreement fell through, it asserted that those shares should be retransferred to it. However this issue of the claim by Ming Yueh over those shares as claimed by it, is still under litigation and it is not for the court at this juncture of the proceedings to speculate on the dispute. In fact it is a duty imposed on every company by s 158(1) of the Companies Act 1965 to keep a register of its members and enter therein the particulars specified in para (a) to (d).

I did not have the benefit of looking at the articles of association of the first defendant company. Be that as it may, art 111(1) contained in Table A of the Fourth Schedule to the Companies Act 1965 specifies to whom the notice of every general meeting should be given other than to a member, namely:

(i) every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting; and
(ii) the auditor for the time being of the company.

Article 111(2) *specifically* prescribes that *no other person shall be entitled to receive notices of general meetings.*

It follows therefore that Ming Yueh does not come within the purview of the said art 111 either. According to s 148(1) of the Companies Act 1965, every member shall, notwithstanding any provision in the memorandum or articles, have a right to attend any general meeting of the company and to speak and vote on any resolution before the meeting: provided that the company's articles may provide that a member shall not be entitled to vote unless calls or other sums personally payable by him in respect of the shares in the company have been paid.

As Ming Yueh was not a member of the first defendant company at the material time, it was therefore not entitled to be issued with a notice of the annual general meeting. That being the case, its so called rights to attend and vote thereat at the meeting as claimed by Ming Yueh were not sustainable. It is imperative therefore that Ming Yueh had no legal status to injunct the first defendant company from attempting to convene the annual meeting when in actual fact the first defendant company was merely complying with the statutory duties imposed on it. Clearly the action to get the injunction on 10 May 1989 smacked of mala fide on the part of Ming Yueh.

Mr Wong, for Ming Yueh, argued strenuously that the court needed to go into the details of the issues involved. With respect, I think Mr Wong was addressing his mind in the wrong directions. In fact, the issue relating to its right to obtain the injunction relating to the adjourned general meeting, in my view, was simple and straight forward — was and is Ming Yueh a registered member of the first defendant company at the material time of the application? I had already answered the question and the consequences that followed as a result of my answer. I would agree with Mr Wong that the court should go into the details of the issues if Ming Yueh asked for injunctions in prayers (2) and (3) of encl (5) but Mr Wong did not do so. Ming Yueh may well succeed in obtaining injunctions as in prayers (2) and (3). Mr Wong further submitted that Ming Yueh would be without remedy if the injunction is set aside and quoted 'equity would not allow a wrong to be suffered without remedy'. With respect, I do not agree. If Ming Yueh is successful in getting a declaration that those shares as claimed by it belonged to it and the necessary orders are given for the retransfer and the registration of those shares in the first defendant company to it, then Ming Yueh is perfectly entitled, especially in view of the substantial shares it will have, to exercise all the attendant rights that a member of a company has. Where is the injustice? In my view injustice would be caused here by Ming Yueh trying to stop the first defendant company from complying with the laws and frustrating the management of the first defendant company and I should say, even to the extent of getting the first defendant to run foul of Bank Negara, and which may in fact have an irreparable damage to the first defendant company. Further Ming Yueh's interest, if any, may eventually be jeopardized also.

In the result I was satisfied that Ming Yueh, not being a registered member of the first defendant company, had no rights of a member for it to exercise. Further, it has no legal status, being a stranger, to injunct the attempt of the first defendant company to hold the annual general meeting. The injunction was, in the circumstances, set aside by me and I also ordered the senior assistant registrar to assess the damages. Costs to the first defendant company.

Injunction set aside.

Solicitors: *Siong & Wong Advocates; Robin Hii & Co Advocates; Ibrahim & Co Advocates; Reddi & Co Advocates.*

Reported by *Michele Rasanayagam*

Government of Malaysia v Sim Soe Hoe

HIGH COURT (SIBU) — SUIT NO 2 OF 1987
CHONG SIEW FAI J
26 AUGUST 1989

Civil Procedure — Regular judgment — Application to set aside — Recovery by government of taxes due and payable — Principles to be applied in civil proceedings brought by the government for taxes due and payable — Income Tax Act 1967, ss 103(1), (4), 106(1) & (3) — Rules of the High Court 1980, O 13 r 8

The defendant was served with six notices of assessment relating to income and development taxes. He failed to pay and the assessed taxes were increased by 10% and subsequently a further 5% under s 103(4) and (5) of the Income Tax Act 1967. The amount was still not paid and the plaintiff issued a writ and subsequently obtained a default judgment. The defendant applied to set aside the judgment, contending that he had a good defence on merits, on the grounds that some of the notices of assessment were incorrectly assessed and that the plaintiffs did not refer the matters to the special commissioners appointed under the Income Tax Act 1967.

Held, dismissing the defendant's application:

(1) Where applications are made to set aside default but regular judgments, the inflexible rule is that there ought to be an affidavit showing a defence on merits. If the application is not thus supported, it ought not to be granted except for some very sufficient reason. To show a defence on merits, a defendant need only disclose an arguable or triable issue.

(2) However, s 106 of the Income Tax Act 1967 provides that taxes due and payable may be recovered by the government by civil proceedings as a debt due to the government and in any such proceedings the court shall not entertain any plea that the amount of tax sought to be recovered is excessive or incorrectly